

IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE DIVISION
SWEET GRASS - BASIN (43BV)

CLAIMANT: C9MT, LLC

CASE 43BV-0326-R-2023

43BV 116573-00

43BV 116576-00

43BV 127316-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. C9MT, LLC is the record owner of claims 43BV 116573-00, 43BV 116576-00, and 43BV 127316-00.
2. Irrigation claims 43BV 116573-00 and 43BV 116576-00 were decreed with the following point of diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSWNE	23	4N	14E	SWEET GRASS

3. The following DNRC issue remark was decreed on claims 43BV 116573-00 and 43BV 116576-00:

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE NWNWSE SEC 23 TWP 4N RGE 14E SWEET GRASS COUNTY.

4. Based on the record, it appears the following change should be made to the point of diversion for claims 43BV 116573-00 and 43BV 116576-00:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	NWNWSE	SWSWNE	23	4N	14E	SWEET GRASS

5. Stock claim 43BV 127316-00 was decreed with the following points of diversion and means of diversion:

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESWNE	9	4N	14E	SWEET GRASS
Period of Diversion: APRIL 15 TO OCTOBER 15						
Diversion Means: DITCH						
Ditch Name: YOST DITCH						
2		NWNWNW	19	4N	15E	SWEET GRASS
Period of Diversion: APRIL 15 TO OCTOBER 15						
Diversion Means: DITCH						
3		NESENE	19	4N	15E	SWEET GRASS
Period of Diversion: APRIL 15 TO OCTOBER 15						
Diversion Means: DITCH						
4		SWSENW	20	4N	15E	SWEET GRASS
Period of Diversion: APRIL 15 TO OCTOBER 15						
Diversion Means: DITCH						
5		NENWSE	20	4N	15E	SWEET GRASS
Period of Diversion: APRIL 15 TO OCTOBER 15						
Diversion Means: DITCH						

6. The following point of diversion issue remark was decreed on claim 43BV 127316-00:

POINTS OF DIVERSIONS 2, 3, 4, AND 5 APPEAR TO BE SECONDARY POINTS OF DIVERSIONS. CAYUSE CREEK SERVES AS THE NATURAL CARRIER OF SWEET GRASS CREEK WATER VIA YOST DITCH TO THESE POINTS OF DIVERSION.

The DNRC did not provide any information in the scanned claim file to explain the issue remark. However, an information remark already exists on the claim stating:

WATER DIVERTED FROM SWEET GRASS CREEK IS CONVEYED TO CAYUSE CREEK WHICH IS USED AS A NATURAL CARRIER TO SECONDARY POINT(S) OF DIVERSION, DIVERSION NO(S). 2, 3, 4, AND 5.

7. It appears the issue remark can be removed from the claim and that points of diversion nos. 2, 3, 4, and 5 should be labeled as “secondary”:

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESWNE	9	4N	14E	SWEET GRASS
Period of Diversion: APRIL 15 TO OCTOBER 15 Diversion Means: DITCH Ditch Name: YOST DITCH						
2		NWNWNW	19	4N	15E	SWEET GRASS
Period of Diversion: APRIL 15 TO OCTOBER 15 Diversion Means: DITCH						
3		NESENE	19	4N	15E	SWEET GRASS
Period of Diversion: APRIL 15 TO OCTOBER 15 Diversion Means: DITCH						
4		SWSNW	20	4N	15E	SWEET GRASS
Period of Diversion: APRIL 15 TO OCTOBER 15 Diversion Means: DITCH						
5		NENWSE	20	4N	15E	SWEET GRASS
Period of Diversion: APRIL 15 TO OCTOBER 15 Diversion Means: DITCH						

8. Claim 43BV 127316-00 was also decreed with the following issue remark:

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A USE RIGHT ON SWEET GRASS CREEK WITH A PRIORITY DATE PREDATING CASE NO. 342 , SWEET GRASS COUNTY.

9. To determine if Claimant C9MT, LLC agreed that the point of diversion legal land description should be modified as described in the issue remark for claims 43BV 116573-00 and 43BV 116576-00, and that claim 43BV 127316-00 points of diversions nos. 2, 3, 4, and 5 should be labeled “secondary”, addressing the issue remarks, an Order was issued. The Order set a deadline for Claimant C9MT to file a statement by May 3, 2023 indicating agreement or disagreement that the following changes be made to the claims in this Case:

- **43BV 116573-00 and 43BV 116576-00:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	NWNWSE	SWSWNE	23	4N	14E	SWEET GRASS

- Issue remarks should be removed from the claims.

- **43BV 127316-00:**

- Points of diversion nos. 2, 3, 4, 5 should be labeled as “secondary”
- The issue remarks should be removed from the claim.

The Order included the following language:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

Nothing was filed by the deadline.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks that appear on a claim as well as any objections the claim receives. Sections 85-2-233, 85-2-247, and 85-2-248, MCA.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

3. The priority date issue remark decreed on claim 43BV 127316-00 indicated that the claim was not included in Case No. 342, Sweet Grass County. The record does not indicate why claim 43BV 127316-00 was not included in the Case. No Objections were filed to claim 43BV 127316-00. The lack of objections or notices of intent to appear indicates no other water users take issue with the priority date decreed on the claim; no priority date changes are needed.

4. If a claimant fails to comply with an Order issued by the Water Court in its review of issue remarks, including an Order issued by a Water Master appointed by the Court, the Court on its own initiative may amend or dismiss the claim to conform with information in the claim file or information obtained as part of the adjudication process. Section 85-2-248(9) MCA. The information before the court indicates that the claims should be modified as discussed in this Report.

RECOMMENDATIONS

1. The claims should be modified as shown in Finding of Fact No. 9.
2. The issue remarks should be removed from claims 43BV 116574-00, 43BV

116576-00, and 43BV 127316-00.

Post Decree Abstracts of Water Right Claims are served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

C9MT, LLC
704 Otter Creek Rd.
Big Timber, MT 59011-7764

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SWEET GRASS CREEK
BASIN 43BV**

Water Right Number: 43BV 116573-00 STATEMENT OF CLAIM
Version: 5 -- POST DECREE
Status: ACTIVE

Owners: C9MT LLC
704 OTTER CREEK RD
BIG TIMBER, MT 59011 7764

Priority Date: JULY 8, 1911

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 4.00 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 150.00

***Source Name:** SWEET GRASS CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNWSE	23	4N	14E	SWEET GRASS

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: HEADGATE

Ditch Name: DRIVDAHL DITCH

Period of Use: APRIL 1 TO OCTOBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	125.00		NW	32	4N	15E	SWEET GRASS
2	3.00		N2SW	32	4N	15E	SWEET GRASS
3	22.00		N2SE	32	4N	15E	SWEET GRASS
Total:	150.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

116573-00 116574-00 116575-00 116576-00

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SWEET GRASS CREEK
BASIN 43BV**

Water Right Number: 43BV 116576-00 STATEMENT OF CLAIM
Version: 5 -- POST DECREE
Status: ACTIVE

Owners: C9MT LLC
704 OTTER CREEK RD
BIG TIMBER, MT 59011 7764

Priority Date: JULY 1, 1912

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 5.00 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 150.00

***Source Name:** SWEET GRASS CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNWSE	23	4N	14E	SWEET GRASS

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: HEADGATE

Ditch Name: DRIVDAHL DITCH

Period of Use: APRIL 1 TO OCTOBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	150.00		NE	32	4N	15E	SWEET GRASS
Total:	150.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

116573-00 116574-00 116575-00 116576-00

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SWEET GRASS CREEK
BASIN 43BV**

Water Right Number: 43BV 127316-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: C9MT LLC
704 OTTER CREEK RD
BIG TIMBER, MT 59011 7764

Priority Date: JUNE 2, 1883

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

***Source Name:** SWEET GRASS CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESWNE	9	4N	14E	SWEET GRASS
Period of Diversion: APRIL 15 TO OCTOBER 15						
Diversion Means: DITCH						
Ditch Name: YOST DITCH						
2 - SECONDARY		NWNWNW	19	4N	15E	SWEET GRASS
Period of Diversion: APRIL 15 TO OCTOBER 15						
Diversion Means: DITCH						
3 - SECONDARY		NESENE	19	4N	15E	SWEET GRASS
Period of Diversion: APRIL 15 TO OCTOBER 15						
Diversion Means: DITCH						
4 - SECONDARY		SWSENW	20	4N	15E	SWEET GRASS
Period of Diversion: APRIL 15 TO OCTOBER 15						
Diversion Means: DITCH						
5 - SECONDARY		NENWSE	20	4N	15E	SWEET GRASS
Period of Diversion: APRIL 15 TO OCTOBER 15						
Diversion Means: DITCH						

WATER DIVERTED FROM SWEET GRASS CREEK IS CONVEYED TO CAYUSE CREEK WHICH IS USED AS A NATURAL CARRIER TO SECONDARY POINT(S) OF DIVERSION, DIVERSION NO(S). 2, 3, 4, AND 5.

Period of Use: APRIL 15 TO OCTOBER 15

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NENE	19	4N	15E	SWEET GRASS
2			NW	20	4N	15E	SWEET GRASS
3			E2	20	4N	15E	SWEET GRASS
4			NESW	20	4N	15E	SWEET GRASS
5			N2	21	4N	15E	SWEET GRASS
6			N2	28	4N	15E	SWEET GRASS
7			N2S2	28	4N	15E	SWEET GRASS
8			NE	29	4N	15E	SWEET GRASS
9			S2	21	4N	15E	SWEET GRASS